

FILED

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

MAY 27 2015

CARMELITA REEDER SHINN, CLERK
U.S. DIST. COURT, WESTERN DIST. OKLA.
BY , DEPUTY

CALVIN DUPREE HORNBECK,

Plaintiff,

vs.

JOHN DOE #1 and JOHN
WHETSEL, OKLAHOMA COUNTY
SHERIFF,

Defendants.

No. CIV-14-276-W

ORDER

On May 4, 2015, United States Magistrate Judge Suzanne Mitchell issued a Report and Recommendation in this matter and recommended that the Court dismiss this action without prejudice as to defendant John Doe #1. Plaintiff Calvin Dupree Hornbeck, proceeding pro se, was advised of his right to object, see Doc. 57 at 10, and the matter now comes before the Court on Hornbeck's objections to the Report and Recommendation. See Doc. 58.

Magistrate Judge Mitchell has detailed the relevant factual and procedural history of this litigation in her Report and Recommendation, and upon de novo review of the record, the Court concurs with her factual findings and legal conclusions. This matter has been pending since March 19, 2014, see Doc. 1, and Hornbeck has not identified and served John Doe #1, despite a full and fair opportunity to do so, or shown good cause for his inaction. See Rule 4(m), F.R.Civ.P. Because the circumstances neither excuse Hornbeck's failure to timely identify and serve this defendant nor support an additional permissive extension of time to do so, e.g., Espinoza v. United States, 52 F.3d 838 (10th

Cir. 1995), the Court in its discretion

(1) ADOPTS the Report and Recommendation [Doc. 57] issued on May 4, 2015;
(2) DENIES Hornbeck's Motions to Show Cause [Doc. 55] filed on April 15, 2015;
(3) DISMISSES this action without prejudice as to John Doe #1; and
(4) because Hornbeck's claims against defendant John Whetsel have already been dismissed, see Docs. 51, 56, and because no other claims remain for resolution, ORDERS this matter be dismissed without prejudice in its entirety.

ENTERED this 27th day of May, 2015.


LEE R. WEST
UNITED STATES DISTRICT JUDGE